



## POLICE DEPARTMENT

June 15, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Joseph Ferrara  
Tax Registry No. 916240  
81 Precinct  
Disciplinary Case No. 85119/09  
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The above-named member of the Department appeared before me on April 29, 2010, charged with the following:

1. Said Lieutenant Joseph Ferrara, assigned to the Internal Affairs Bureau, Group #26, while on-duty, on or about October 10, 2007, and November 1, 2007, did wrongfully and without just cause utilize a Department computer system to make inquiries which were not related to the official business of the Department when he accessed Internal Affairs Bureau logs where he was named as a subject or personally involved.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent represented himself.

The Respondent entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent is found Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Lieutenant Paul Smith as a witness.

LIEUTENANT PAUL SMITH

Smith, a 27-year member of the Police Department as of May 2010, has been assigned to the Internal Affairs Bureau ("IAB"), Special Investigations Unit since April 2007. Smith stated that members of the Special Investigations Unit investigate allegations of serious misconduct and corruption against members assigned to IAB, or against executive members of the Department. As a team leader, Smith supervises investigations of cases that come into his office.

Smith testified that the Special Investigations Unit of IAB became aware of allegations in this matter against the Respondent through an "anonymous complaint that was written by an anonymous complainant" in 2008. Smith stated that the allegation alleged that the Respondent was using Department computers for his personal use. Smith stated that an investigation was conducted at that point, in which he initially directed the investigating officer, Sergeant Mulvihill, to have Group 7, the Computer Forensic Investigations Unit, conduct an audit of the Respondent's computer usage. He explained that he directed Mulvihill to make the request to Group 7 because they are the unit that carries out computer investigations and monitors the IAPRO system. Smith indicated that Mulvihill is currently on maternity leave. Smith testified that he assisted in this investigation, has looked at all of the paperwork and documents in this investigation, and is familiar with the facts of this investigation.

Smith stated that after Mulvihill made the request to Group 7, the unit conducted a computer audit of the Respondent's computer usage and provided the Special Investigations Unit a printout of that usage.

Smith testified that when Mulvihill received the Respondent's computer usage log [Department Exhibit (DX) 1], she examined "all the logs . . . to see what they entailed and to actually see what the subject of the allegations was and who the subject officers were." When asked if this document was made in the ordinary course of business of the New York City Police Department, Smith replied, "Yes." He indicated that the dates on the computer usage log were from September 9, 2007 through December 17, 2007. He stated that the IAB log numbers that appear on the computer usage log were investigated, the first of which was IAB log number 07-28798 which showed the Respondent as a subject officer in an allegation of intimidation (printout, DX 2). Smith testified that the computer usage log (DX 1) shows that the Respondent "accessed the IAPRO computer database and viewed this particular log" on October 10, 2007.

Smith testified that on October 10, 2007, the Respondent also accessed the next IAB log number 07-30161, which showed the Respondent as a subject officer in a log that was generated by an anonymous complainant (printout, DX 3). Smith stated that the Respondent accessed and viewed IAB log number 07-05460 on November 1, 2007, in which the Respondent was a subject officer involved in a motor vehicle accident (printout, DX 4). He then stated that IAB log number 02-08518 was accessed by the Respondent on November 1, 2007. An investigation of that IAB log number showed that the Respondent was the subject officer of an allegation involving excessive and unnecessary use of force (printout, DX 5).

When asked if members of IAB were allowed to access logs that pertained to allegations in which they were involved or personally named a subject, Smith responded, "No." He indicated that members of IAB are told not to access logs in which they are personally involved or named subjects. He explained that members of IAB are not allowed to do that because "it poses a potential to compromise current investigations in which the members of IAB may be named subjects."

Smith indicated that an investigation was conducted to see if the Respondent worked on October 10, 2007 and November 1, 2007, the dates that Smith said the Respondent had accessed the logs. Smith testified that the investigation showed that the Respondent did work on those two dates. [DX 6 and DX 7 are copies of the roll call for October 10, 2007 and November 1, 2007, respectively.]

After refreshing his recollection by viewing DX 6 and DX 7, Smith stated that the Respondent performed a "1115 by 2000 tour of duty" on October 10, 2007 and a "015 by 1250 tour of duty"<sup>1</sup> on November 1, 2007. When asked to view DX 1, Smith indicated that the Respondent accessed the IAB log at 2126 hours and 2128 hours on October 10, 2007. Smith stated that on the roll call for October 10, 2007 (DX 6), the Respondent signed out with an "omitted entry" at 2000 hours. He further explained that the entry above the omitted entry showed that the last person who signed out prior to the Respondent did so at 2030 hours. He stated, "Basically, this indicates that [the Respondent] was present in the building beyond his tour" of 2000 hours. Smith stated, "The roll call indicates he signed out at 2030. We don't know what time he actually physically left the building."

Smith indicated that he spoke with the Respondent about the computer misuse

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<sup>1</sup> DX 7 shows the Respondent actually signed in at 0405 hours and signed out at 1500 hours.

during his official Department interview<sup>2</sup>. He also indicated that he asked the Respondent if he accessed IAB logs on October 10, 2007 and November 1, 2007. He stated that the Respondent “admitted to viewing the logs and also admitted to computer misuse.”

On cross-examination, Smith agreed that he is currently assigned to the Special Investigations Unit of IAB and has been assigned there since April 2007. When asked if the Special Investigations Unit had more “seasoned and experienced” investigators because it was a special investigations unit, Smith replied, “Yes.”

Smith agreed that he was familiar with the team leader case review worksheet and that its purpose was to review the case being investigated and to guide the investigator with the investigative steps to be taken. Smith stated that his duties could include preparing a team leader case review worksheet, which, in his particular office, would be done at the beginning of a case and upon the conclusion of an investigation. Smith was given a document with a highlighted section that he was asked to read aloud, which indicated that a team leader case review worksheet “must be reviewed upon receipt, upon conclusion, and a minimum every 30 day period while active.” Smith agreed that he was Mulvihill’s team leader during the investigation and that he reviewed her worksheets in regards to this case investigation. He responded in the affirmative when asked if he signed the worksheet upon reviewing each one, and, if by signing it, he was “pretty much attesting that the information contained therein is accurate.”

Smith acknowledged that when an investigator receives documents, “in most cases” it is documented where the information came from or who supplied the information. He further explained that in cases where it is not documented, “it’s maybe

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<sup>2</sup> In the trial transcript, the Official Department interview is also referred to as a “G.O.” and “PG hearing.”

due to a reason that the investigator wasn't exactly aware of where it came from."

Smith stated that when an investigator requires specific documents, the request could be done through a formal request or a telephone call. He stated that the review of the document is "normally" detailed on the worksheet. If a request was made through a telephone call and not a formal request, Smith stated that "in some case" it "may" be documented on a worksheet. He stated that although an official request was made, an investigator would "not necessarily" send out a request; it "may just be documented, obtained, and reviewed." When asked if there would be a worksheet detailing the information that was obtained in regards to that request for information, Smith replied, "That was reviewed, yes." He agreed that once the investigator gets this information, he or she would put it into the case folder.

When asked how soon after receiving an allegation of computer misuse an investigator should submit a request for computer usage records, Smith replied, "There is really no protocol establishing in terms of time." Smith indicated that if an investigator needed computer records in regards to the use of the FINEST system, the request would be forwarded to MISD. If an investigator required computer usage records in regards to the use of the BADS system, Smith stated that the request could either go directly through MISD or through Group 7, which would then forward the request to MISD. Smith stated that if an investigator needed computer usage records in regards to the use of the IAPRO system, the investigator would "confer" with Group 7.

When asked if a background check was performed on the Respondent during the investigation, Smith replied, "I believe it was, a background check was done." Smith reviewed a copy of the CPI index that was printed out as part of that background check

and was asked if the Respondent had any “negative findings” in his background, to which Smith responded, “Based on this review, no.” When asked if it was true that the Respondent was in good standing with the Department, Smith replied, “I can only speak to what the background check states. It basically states that there were several allegations lodged against [the Respondent], some were unsubstantiated, meaning they couldn’t be proved or disproved.”

Smith stated that he did not recall the exact date that the allegation of computer misuse was received by Mulvihill, but it was in 2008. [The parties stipulated that the anonymous letter was dated May 10, 2008.] Smith denied that the letter stated the following: a specific computer system that was used by the subject, a specific date of the computer misuse, a specific period of time that the computer misuse was performed, and whether the Respondent performed computer misuse on duty or off duty.

Smith agreed that the misuse of Department computers is a serious violation of Department policy, that the IAPRO system contains all logs generated against members of the service, and that a person could tell what allegation was made against a specific person by “look[ing] into” the IAPRO system. When asked if a person could tell if there was an active investigation being performed by looking into the IAPRO system, Smith responded, “Not necessarily.” Smith stated that all members of IAB, including Group 7, have access to the IAPRO system.

When asked again if “from an IAB point of view, specifically from Group 1, the Special Investigations Unit, . . . IAPRO misuse is a serious violation,” Smith answered in the affirmative. He agreed, once again, that the letter received by Mulvihill on May 10, 2008 alleging computer misuse did not specifically state what computer system the

Respondent misused. Smith agreed that misuse of the IAPRO system could be a possibility since the Respondent worked in IAB at the time of the allegation, and that other types of computer systems could be misused by the Respondent as well. Smith stated, "I really don't recall," when asked when Mulvihill requested the Respondent's computer usage records. [The parties stipulated that the date Mulvihill made the inquiry was January 9, 2009.] When asked again when the request for the Respondent's computer usage records was made by Mulvihill, Smith replied, "Based on the worksheet, January 9, 2009."

When asked why a request for computer records was not prepared until January 9, 2009, nearly eight months after the allegation was received, Smith replied, "Well, there were other aspects to this investigation that was being investigated at the time. In addition to that, there's 18 months for the SOL<sup>3</sup> to run out, so we had ample time to look into the matter." When further asked if it was true that if a person were misusing especially the IAPRO system, that the Special Investigations Unit would want to know that as soon as they could to avoid any open investigations being compromised, Smith responded, "That's a possibility, but I also stated that we had other aspects of this case being investigated."

Smith agreed that he was the team leader on the case the entire time it was being investigated, saying, "I believe I was, yes." When asked if, as team leader, he was reviewing the case folder every 30 days "like [he] was supposed to," Smith replied, "Yes, I reviewed the case—it may not be every 30 days. I was constantly reviewing the case and was in communication with the investigating officer on all the cases." When asked how he was documenting the team leader review every 30 days, Smith stated, "The

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<sup>3</sup> Statute of limitations



reviews were not being documented on a bi-monthly basis—monthly basis.”

When asked if he was aware of how many team leader reviews he submitted into that particular case folder from May 10, 2008, when Mulvihill received the allegation of computer misuse, to January 9, 2009, when Mulvihill made the request for computer usage records, Smith replied, “No, I am not aware.”

Smith was shown the second request for the Respondent’s computer usage that was prepared by Mulvihill on January 9, 2009. When asked where Mulvihill was requesting the information from in regards to that worksheet, Smith responded, “As it relates to this particular worksheet, MISD.” Smith denied that a Commanding Officer of MISD can provide the usage for the IAPRO system.

When asked when a request for IAPRO usage was prepared, Smith stated that he did not recall. He agreed that “at some point” IAPRO usage was obtained by Mulvihill. He denied that it was not known from where Mulvihill obtained the printout. Smith stated, “We know where she obtained it from. It was obtained from Group 7.” When asked if there was any mention in the case folder where Mulvihill obtained the printout from, Smith reiterated that Group 7 obtains the IAPRO usage log and “that’s where it comes from.” When asked if there was any mention where Mulvihill “actually” obtained the IAPRO usage log, Smith replied, “Okay.”

Smith agreed that he was previously shown copies of the IAPRO usage printout by the Assistant Department Advocate, that it was two pages, and that it entailed two different dates. When asked for a way to tell where that IAPRO printout came from when there were no markings on it to describe where it was from, Smith replied, “It was obtained from—it was sent to us by Group 7.”

When asked by the Court if he knew where the IAPRO printout came from, Smith replied, "Yes, I know it came from Group 7. They produce it." When asked by the Court if there was any other place it could come from, Smith stated that it could not come from any other place but Group 7.

On continued cross-examination, when asked if it was possible that somebody could have "made this up" on their computer since there were no identifying characteristics coming from Group 7 or any official stamps or logos, Smith stated, "No." He explained that it was not possible because "based on other cases, this particular printout is consistent with all other computer misuse cases where that particular document is reproduced."

When asked if worksheets are prepared when an investigator requests information and receives it, Smith stated, "If it's an official formal request. Not all requests are formal or official." When asked if a formal request for an IAPRO usage printout would be made for "something as serious as that for an allegation of computer misuse," Smith replied, "Sometimes it could be done by a phone call, call Group 7, have a computer usage audit conducted. Depending on the expediency of the case and depending who is actually submitting the request." Smith agreed that it was necessary to document that the information was requested.

Smith was shown a worksheet that indicated that Mulvihill received and reviewed the Respondent's IAPRO usage. The "search" indicated that the Respondent accessed Log Number 08-21191 on May 16, 2008 at 0956 and 0958 hours. Smith indicated that Mulvihill obtained this information from the usage log. When asked if the Respondent was ever questioned about accessing IAPRO on May 16, 2008, Smith stated, "Not that I

recall.” When asked why the Respondent was not questioned about May 16, 2008, Smith responded, “There was no relevance to the investigation as it pertained to computer misuse.”

When asked by the Court if the BADS form has a heading from the BADS system, Smith stated that it did, but that it was a separate unit outside of IAB. He further stated that “about every aspect of computer usage, except IAPRO, goes through the MISD system.”

Smith agreed that he recalled the date of March 23, 2009, and the official Department interview in regards to this case. He stated that he did not recall talking to the Respondent prior to the interview but agreed that he or the case investigator spoke to the Respondent’s attorney prior to the official Department interview. He said that during the conversation with the Respondent’s attorney, “we give the allegation of what we are there for and the substance of the allegation.” When asked if any specific dates were given to the Respondent’s attorney, Smith stated that he did not recall. He replied in the negative when asked if the Respondent was aware of any specific dates regarding the investigation prior to his official Department interview, but stated that the Respondent was informed of and was aware that there was an “issue of computer misuse.”

Smith agreed that during the official Department interview, he did ask the Respondent specifically of any dates of alleged computer misuse, although he did not recall exactly at what point during the interview it was asked. [An audiotape recording and transcript of the Respondent’s official Department interview were entered into evidence as DX 8 and DX 9, respectively.] The Respondent stated that it was he and not the investigators who supplied the dates, reading from the following portion of the

transcript of his official Department interview (DX 9):

Sergeant Mulvihill asked how long were you assigned to Group 52? [The Respondent] states September '07 to May of '08. Sergeant Mulvihill on line 7 asks: Well, during your time in IAB, has there ever been a time that you utilized any Department computers or computers systems for personal use? [The Respondent] in line 10 states, uh, yes. Sergeant Mulvihill in line 11 states could you explain what, what the circumstances are—what the circumstances are you would, are why you would. In line 13, [the Respondent] states on, I believe, it's October 10 and November 11, 2007.

When asked by the Court if that portion of the transcript refreshed his collection as to what happened, Smith stated, "I have no independent recollection at this time, Judge."

When asked if he asked the Respondent during the official Department interview how the Respondent recalled those two dates specifically, Smith stated, "I believe that was asked."

Smith stated that he did not recall when asked if, at any time during the official Department interview, the Respondent was shown any command logs or roll calls to verify that he was working on those dates in question. When asked if anything was presented to the Respondent to refresh his memory or to corroborate the allegations against him, Smith stated, "I have no independent recollection of that."

Smith agreed that the dates of the alleged incident were October 10, 2007 and November 1, 2007 and the official Department interview was conducted on March 23, 2009, which was approximately 17 months between the incident dates and the official Department interview. When asked if he ever inquired how the Respondent could remember what happened 17 months in the past, Smith stated, "The subject made statements as it relates to computer misuse, and that was the intent of the hearing, and we

accomplished our goal.”

When asked if there was corroborating evidence that the Respondent accessed IAPRO and reviewed logs that he was not supposed to view, Smith stated that the IAPRO usage log was the corroborating evidence. He stated that he did not recall when asked if during the official Department interview he informed the Respondent of what specific date and time the logs were viewed. He agreed that, prior to the official Department interview, the case investigator verified that the Respondent was working on the date and time of October 10, 2007. Smith agreed that he had previously testified that, on October 10, 2007, the Respondent had signed in at 1115 hours and ended his tour at 2000 hours. Smith stated that he did not recall when asked if he ever questioned the Respondent during the official Department interview of “him going end of tour 2000 hours and yet the IAPRO printout shows access at 2128 and 2129 hours.” Smith stated that he did not recall when asked if, during the official Department interview, he ascertained if the Respondent stayed past his tour or if any overtime slips were submitted for the Respondent for October 10, 2007. When asked if the Respondent ever admitted to accessing the IAPRO system “while on job time,” Smith stated, “I don’t believe that question was asked specifically. The question was asked did you ever commit computer misuse, to which [the Respondent] answered yes.”

When asked how he “[came] up” with the second date in question, November 1, 2007, Smith stated that the date was based on the IAPRO usage log (DX 1). When then asked if the Respondent, during the official Department interview, ever admitted to accessing any logs on November 1, 2007, Smith stated, “Again, let me just reiterate, the question was asked [has the Respondent] ever committed computer misuse, and [the

Respondent] answered yes.” He denied that dates were supplied, but stated that the circumstances of the computer misuse were stated during the official Department interview.

Smith agreed that, upon completion of the official Department interview, the case investigator prepared a worksheet detailing the results of that hearing. When asked if he reviewed the tape of the official Department interview at any time prior to the case investigator typing up the worksheet, Smith stated that he was present during the interview and he did review the tape. When asked if, during the review of the tape, he noticed that the Respondent admitted to accessing IAPRO on November 11, 2007 and not November 1, 2007, Smith stated, “No, I did not notice.” When then asked if he signed the worksheet attesting that the information contained therein was accurate, Smith stated, “I signed the worksheet as a summation of the [official Department interview].” When asked if the date of November 1 for the charges were drawn up as a result of the official Department interview, Smith replied, “In addition to the independent evidence corroborating the computer misuse.”

When Smith was asked again if the Respondent was ever asked during the official Department interview if he worked on October 10, 2007 at 2128 and 2129 hours, Smith stated, “I don’t believe that question was specifically asked.” When then asked if he ever “point[ed] out” to the Respondent specifically the times that the logs were viewed and the “fact that he had signed out and went home at those times,” Smith stated that he did not believe that that was specifically done.

When asked if the “issue of the time conflict” was not brought up during the official Department interview, Smith stated, “There was no issue. We basically asked did

[the Respondent] commit computer misuse, to which [the Respondent] answered yes.”

On redirect examination, Smith agreed that he was present at the Respondent’s official Department interview and that Mulvihill asked the Respondent about a log from 2002 that was viewed on November 1. He then agreed that he was able to corroborate with independent evidence that the Respondent, in fact, did engage in computer misuse. When asked what that corroborating evidence was, Smith stated that it was the IAPRO usage log that documented the Respondent’s IAPRO usage for the period that was examined. He agreed that when he took the usage log, he ran the different IAB numbers, from which he was able to pull up the IAB logs. When asked what the IAB logs showed, Smith stated that they showed the logs that the Respondent viewed and accessed, logs in which he was named as a subject officer. He agreed that that is not permitted. He agreed that IAPRO is a system maintained by IAB.

When asked how IAPRO is accessed, Smith explained that the “access is normally done through a code that is provided to each member of the service when they come into the bureau.”

On re-cross examination, when asked who else maintained the IAPRO passwords, Smith stated that the passwords are issued by Group 7, which also maintains a listing of the passwords. When asked if it were possible that someone else could have accessed the IAPRO system using the Respondent’s password, Smith stated, “If the subject provided it to that person.”

The Respondent's Case

The Respondent testified in his own behalf.

THE RESPONDENT

The Respondent stated that he is currently assigned to the 81 Precinct. [The Respondent, on his own, would not call himself as a witness.]

On cross-examination, the Respondent agreed that he had an official Department interview. He denied that he was asked a series of questions at that interview, but agreed that he was asked more than one question. He answered in the affirmative when asked if he was represented by counsel at that official Department interview and if he understood that he had to be truthful. He agreed that he was truthful at that interview. When asked if he admitted to engaging in computer misuse at that Department interview, the Respondent stated, "Yes." The Respondent stated that he gave specific dates, when asked if he specifically said that he looked at the logs in October and November of 2007. He agreed that he accessed those IAB logs because he was "worried that investigations may have been generated by past investigations where [he was] personally involved." He also agreed that he had been told not to engage in computer misuse when he started at IAB, and had signed a document where he agreed not to access logs where he was named as a subject.

[In response to the questions during cross-examination, the Respondent made a statement under oath.] The Respondent stated that he was informed by his attorney, prior to the official Department interview, that the "allegation from the Special Investigations Unit investigators was that IAPRO was accessed under [his] name for October 10, 2007



and November 1, 2007.” He further stated that, during the official Department interview, had he known the times that IAPRO was accessed, he “would not have admitted to accessing IAPRO on October 10, 2007 based on the fact that [he] was no longer present at the command in order to do so.” He stated that he never admitted to accessing IAPRO on November 1, 2007; he admitting to doing so on November 11, 2007, but the investigation conducted showed no evidence there was any access on November 11, 2007. After being asked by the Court if he was aware of the rule about false statements under oath and if he was aware that he was under oath now before the Court, the Respondent stated, “Yes.” He further agreed that he understood that if he were found in either of those instances to have lied, then he would face a far more serious penalty than he did on the underlying charge.

During examination by the Court, the Respondent, when asked if at any time, using IAPRO, he accessed logs involving himself, stated, “I don’t recall specifically dates and times.” But then when asked by the Court if he did or did not, he conceded, “Yes, I may have.” When asked again if he did or did not access “a log, any log, at any time” involving himself, the Respondent stated, “It was 17 months ago. I don’t recall honestly.” He reiterated that he did not recall when asked if he did not recall that he had accessed a log involving himself. When asked, “Are you aware in October of 2007 that somebody had made a log about you, about anything? Are you aware of a log?” the Respondent stated, “Yes, I am now.” He stated that he did not recall back in 2007 specifically when he became aware of a log. When asked, “So you are telling me you don’t know if you accessed your own logs,” the Respondent stated, “I don’t recall when I accessed any logs.” He agreed that he did access a log involving himself at some time,

but he stated that he “honestly” did not recall the specific dates. When asked for an approximate date that he accessed a log, the Respondent stated, “Any time during the years of 2004 to 2008.” He agreed that it was sometime between 2004 and 2008 that he accessed his own logs, but he stated that he did not know how many times, when asked. When asked if it was 20 times, or more or less, the Respondent stated that he did not know because, as a case investigator in IAB, he accessed logs “on numerous occasions,” such as times when he “reported the preference of charges and specifications against individuals in which [he] was enforcing cases on.” When specifically asked about the number of times that he accessed logs about himself, he stated that he did not recall. When asked if it was more than two times, he stated, “I don’t recall. You know, this is two years ago.” When then asked if it was more than one time, the Respondent stated that he did not recall.

#### Summary of the Respondent’s Official Department Interview

On March 23, 2009, the Respondent was interviewed during a P.G. 206-13 hearing. Also present were two investigators, Lieutenant Paul Smith of IAB, Special Investigations Unit and Sergeant Mulvihill<sup>4</sup> of IAB Group 1; and the Respondent’s attorney, Robert Brown.

The Respondent stated that his current assignment was at IAB Group 26, where he has been since May 2008. Before that, he was assigned to Group 52 from September 2007 to May 2008. When asked by Mulvihill if during his time in IAB there was ever a time that he had utilized any Department computers or computer systems for personal use, the Respondent stated, “Yes.” He stated that he believed it was October 10 and

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<sup>4</sup> In the transcript of the Official Department interview (DX 9), Mulvihill’s name is spelled “Maldahil.”

November 11, 2007. He explained that he was “concerned regarding a relationship that [he] was having with another member of the service who was [REDACTED] to a chief on this job.” This chief had a trial in criminal court, which the Respondent attended “on [his] own time, non-Departmental time” to support his girlfriend at the time. At the conclusion of that trial, a detective from Group 1 approached him and “forced” him to identify himself “as to who [he] was, why was [he] there and what purpose would [he] be in there.” This occurred around the first or second week of September, when the criminal trial took place. The Respondent stated, “At that time I was told if I didn’t identify myself the computer systems would be checked for my picture and I would be identified through my photo and possible disciplinary action for refusing to identify myself to an investigator would be taken.” He further stated, “As a result I got nervous afterwards thinking what I did wrong I didn’t know. So I did access the system to see if I had anything generated as a result of that.”

The Respondent reiterated that the criminal trial for Chief Mohammed in Nassau County Criminal Court occurred in the first or second week in September. He agreed that he had stated that a detective “forced” him to identify himself. When asked by Smith if there were any “physical threats or anything like that,” the Respondent stated, “No, just that my name my picture would be associated with the Department computer systems” which could lead to possible disciplinary action if he did not identify himself. The Respondent stated that the detective’s name was Moore and he agreed that that was the extent of the conversation that he had with him in September.

When asked by Mulvihill why he waited until October to view the log, the Respondent stated:



I just started thinking. I knew there was problems between my [REDACTED] and the chief and I also knew that this Detective Moore had a long ago somewhat relationship because they were old housing with Chief Mohammed and I know how this job is with chiefs and I know how this job is with pushing other people around or asking for favors and I got worried that because I was there and now he knew who I was—because after that meeting he knew who I was based on conversations between my [REDACTED] and the chief.

The Respondent further stated that the only way that the chief was able to identify him was through Detective Moore identifying him that day outside the courtroom. He stated, "So I got worried thinking about it and I went and I checked." When asked by Mulvihill why he checked again a month later in November, the Respondent stated, "Well just the same thing. Just to see if there was anything else going on, uh, I was still nervous you know?" He further explained that he was "just nervous" because he was unsure if he had to identify himself at the courthouse since he was there on his own time and was facing possible disciplinary action.

When asked by his attorney if his relationship with [REDACTED] was serious at that point, the Respondent stated, "Yes." When asked by Mulvihill when the approximate beginning of the relationship between him and Green was, the Respondent stated it was in early 2007. When asked by Mulvihill to explain why he was looking at a log in which he was a subject in 2002, the Respondent said, "Uh, I don't know." Mulvihill stated that it was also viewed on November 1 and was from 2002. The Respondent explained, "[T]hat was just me looking at I think a previous log in which I was a subject for, uh, I think a foster case where I was the 40." When asked by Mulvihill, he stated that he did not know why he would be looking at that log since he

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<sup>5</sup> [REDACTED] was the Respondent's [REDACTED] at that time. She is now his [REDACTED]

knew what the outcome was for it. He then stated that he might have “clicked on the wrong thing” when he was looking.

When asked by Mulvihill if, any time since he had been assigned to IAB, he had run any of his personal information in the FINEST computer regarding license plates or driver’s license checks, the Respondent asked, “Do you mean to get a placard sometime? You know when you’ve got to run your—when we used to run our plates and our driver’s licenses and give them a printout too? To get a plaque?” To which Mulvihill stated, “Now. Are you issued a Department car?” The Respondent stated that he was. When then asked if he got a plaque for his personal car as well as a “job car plaque,” he stated that he did not think so since he has been a lieutenant. When Mulvihill asked, “So would there be any reason why you would run your driver’s license and your license plate in FINEST?” the Respondent stated that he did not think so. When Mulvihill was asked by the Respondent’s attorney what period of time that was, she stated that it was September 2007. The Respondent stated that he did not really know why he would have run that information in September.

When asked by Smith if there was anything else to add to this hearing, the Respondent’s attorney asked, “Yeah just that you can’t run your own license and plate number?” Smith stated that if it could be done when it is in conjunction with “some sort of . . . police, um, requirement” such as for a placard or “something of that nature.” Smith further stated, “However, um, [the Respondent] states he doesn’t know why he ran it.”

When asked by Mulvihill if there was anything that he wanted to add, the Respondent stated:



Yeah. A couple of things I'd like to add. Ever since Chief Mohammed broke up with Dawn Greene I have been the subject of harassment from Chief Mohammed through the Department and I feel this is all retaliatory starting with that date in court in which I don't believe after checking out later that I needed to identify myself I was in Nassau County on my own time not an active participant in the trial and therefore I shouldn't have been identified. As a result of that identification that day and Detective Moore going over to his family and talking with them as soon as she got done talking with me in the hallway led Chief Mohammed to know what my identity was and was in—and caused everything that transpired afterwards as a result of that. I believed Chief Mohammed abuses his power and his authority within the NYPD. And I believe that his jealousy has caused him to overstep his bounds within the NYPD and take on a retaliatory nature against myself for having a relationship with his former [REDACTED]

Mulvihill then indicated to the Respondent that the allegation, for which he was being questioned, was generated by an anonymous letter. The Respondent agreed with Mulvihill that members of IAB cannot access personal information via any database within the New York City Police Department, to which Mulvihill stated, "And, uh, yet you just acknowledged, uh, that you did so." The Respondent explained, "Yes I was in fear of what was going on that I didn't know about as a result of my information being given to Chief Mohammed in September of '07 . . . [a]s a result of Detective Moore forcing it out of me and then giving it to his family to pass on to him."

Smith stated, "But just to be clear you also viewed logs that have nothing to do with Chief Mohammed. You do know that?" The Respondent then stated that he did not know why and reiterated that he may have clicked on "the wrong one." He said that he did not know if they were next to each other in the list and he "accidentally" clicked on it. Smith said that this hearing involved computer misuse relating to the access of personal information for records that went back to 2002, for logs that the Respondent accessed that

had “nothing to do with Chief Mohammed.” To which the Respondent stated, “Yeah that might have been accidental—.”

### FINDINGS AND ANALYSIS

The Respondent is charged with improperly accessing confidential Department files to read allegations against him. The evidence against the Respondent is straightforward. Records of times he accessed the IAPRO system were provided on print-out (DX 1). Four entries were pointed out. Two occurred on October 10, 2007 and two more occurred on November 1, 2007. Records underlying those entries were also entered into evidence, (DX 2 - DX 5). Each one reflected a complaint regarding the Respondent.

The Respondent also made statements during an official Department interview, the audio recording and transcript of which were entered into evidence (DX 8 and DX 9). During that interview the Respondent admitted to accessing his own records on the IAPRO system.

In his testimony at trial the Respondent was given an opportunity to make a statement. The Respondent stated:

I was informed prior to my PG hearing my attorney was informed prior to the PG hearing of the dates of October 10, 2007 and November 1, 2007. The attorney informed me that the allegation from the Special Investigations Unit investigators was that IAPRO was accessed under my name for October 10, 2007 and November 1, 2007. Had I known the times during the PG hearing, had that point been brought up by the investigators from Group 1 in regards to the time that this was accessed, I would not have admitted to accessing IAPRO on October 10, 2007 based on the fact that I was no longer present at the command in order to do so.

And the date November 1, 2007, I never admitted to accessing IAPRO on November 1, I admitted to accessing IAPRO on November 11, 2007. And



there was no evidence to show that there was any access to November 11, 2007 as it pertains to the investigation that was conducted.

At this point in his testimony, the Court reminded the Respondent that he had given statements under a duty to tell the truth and that he was under oath during his testimony at trial. The Court pointed out that he could be putting himself in substantial peril.

After that, the Respondent disclaimed any recollection of the events in question. Then he admitted to accessing his records but could not pin down the time period during which it occurred better than sometime between 2004 to 2008.

A review of the tape recording of the Respondent's official Department interview reveals that the Respondent gave a comprehensive statement regarding the fact that he had checked his records and the reasons why he had done so. The reasons were linked to a conflict he had with a supervisor who previously dated his then [REDACTED]. The way he put it at the interview was: "I was concerned regarding a relationship that I was having with another member of the service who was [REDACTED] to a chief on this job." He was so invested in this issue that he had attended a trial in Nassau County involving that chief. At that trial he had had a confrontation with an investigator from the Internal Affairs Bureau.

At his official Department interview he stated that he was greatly concerned about the possibility that someone might make a false report about him that he felt driven to check his own personnel records. Although he did not recall the exact dates, the way he put it was, "I believe it was October 10th and November 11<sup>th</sup>." He knew and acknowledged that he had gone into his records on two occasions. He recalled that the



trial was the first or second week of September and that the first time he went into his records was about a month after that trial. He also discussed the fact that he went into his records about a month later in November and explained that the reason he did it was “just to see if something else was going on, I was still nervous you know.”

The Respondent’s claim that he did not admit to going into his records on November 1, 2007 is ludicrous. The Respondent acknowledged that he went into his records in November and the exact date he mentioned is incidental. His claim that he signed out before the inquiry was made on October 11, 2007 is equally without merit. The Respondent might easily have signed out and then gone into the system to create a defense that he was not there. In any event the Respondent admitted at his official Department interview that he checked his own records in October and gave a precise reason, along with an approximate date.

In assessing the facts no reasonable conclusion can be drawn but that the Respondent was truthful at his official Department interview and that he was less than truthful in his statement to the Court in this case. The motive behind the computer searches is unique and one that only the Respondent could have provided. The events were so memorable that the Respondent’s sudden lack of memory is clearly untruthful.

The evidence provided by the Department along with the Respondent’s statements at his official Department interview provide overwhelming evidence that the Respondent knowingly and improperly searched the IAPRO database to look into his own records. The Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

It should be noted that during the trial and the proceedings leading up to it the Respondent demonstrated his knowledge and understanding of the proceedings. The Respondent demonstrated that he was capable of representing himself. That fact notwithstanding, a person who is a pro se litigant should be afforded some extra latitude and this Court endeavored to grant the Respondent, in his role as attorney, just that latitude as well as some measure of assistance. The fact, however, that a person is self-represented should not be a shield behind which misconduct can be hidden or be ignored.

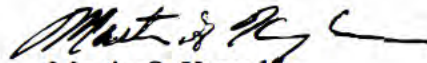
There is ample evidence that the Respondent, in his testimony in this proceeding, was less than truthful and that this lack of candor was more than a mere denial of the facts. His claim that he did not recall checking his records, later modified to his claim that he did but could not pin the time down better than a window between 2004 and 2008 defies belief. His repeated assertions that he was testifying "honestly" were not credible.

Using his privilege as a member of IAB to access his own records is not only a display of poor judgment but a breach of trust. Both of these problems were again displayed during his testimony at this trial.

As a result a period of monitoring is appropriate and thus this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that

his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. Further this Court recommends that the Respondent forfeit 30 vacation days.

Respectfully submitted,



Martin G. Karopkin  
Deputy Commissioner – Trials

**APPROVED**  
JUN 30 2010  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER

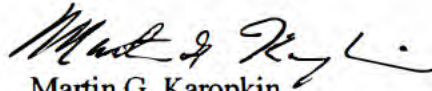
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner -- Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT JOSEPH FERRARA  
TAX REGISTRY NO. 916240  
DISCIPLINARY CASE NO. 85119/09

In 2008, the Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 5.0 "Extremely Competent" in 2005 and 2006. He has been awarded one medal for Meritorious Police Duty. In his 15 years of service, [REDACTED]

[REDACTED] has no prior formal disciplinary record. Based on his overall record, the Respondent was placed on Level-II Discipline Monitoring in June 2009.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner Trials